THE HON. SRI M. A. MANICKAVELU : Yes, I think there may not be any necessity to come again before this House for extension of this provision because there may not be necessity for this very Act.

MR. CHAIRMAN : The question is—

'That the Madras Agricultural Income-tax (Amendment) Bill, 1961 (L.A. Bill No. 12 of 1961), as passed by the Legislative Assembly, be taken into consideration'.

The motion was put and carried and the Bill was taken into consideration.

Clause 2 was put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI M. A. MANICKAVELU : Mr. Chairman, Sir, I move—

'That the Madras Agricultural Income-tax (Amendment) Bill, 1961 (L.A. Bill No. 12 of 1961), as passed by the Legislative Assembly, be passed'.

MR. CHAIRMAN : The question is—

'That the Madras Agricultural Income-tax (Amendment) Bill, 1961 (L.A. Bill No. 12 of 1961), as passed by the Legislative Assembly, be passed'.

The motion was put and carried and the Bill was passed.

(3) THE MADRAS GENERAL SALES TAX (SECOND AMENDMENT) BILL, 1961 (L.A. BILL NO. 15 OF 1961).

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, I move—

'That the Madras General Sales Tax (Second Amendment) Bill . 1961 (L.A. Bill No. 15 of 1961), as passed by the Legislative Assembly, be taken into consideration'.

Sir, this contains the concessions made by the Hon. the Finance Minister with regard to the facility of compounding up to Rs. 50,000 and the occasion has been taken advantage of to bring the various recommendations made by the Committee on Subordinate Legislation into effect. I shall briefly explain the scope of the clauses of the Bill.

The term "Assistant Commercial Tax Officer" occurs in section 54 of the Madras General Sales Tax Act, 1959. The term is defined only in rule 3 (*b*) of the Madras General Sales Tax Rules, 1959. The Committee on Subordinate Legislation which examined the rules, recommended that the term should be defined in the Act itself. Sub-clause (i) of clause 2 of the Bill gives effect to this recommendation.

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* Printed as Appendix III on pages 128–133 infra.

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The expression " casual trader " as now defined in clause (*e*) of section 2 of the principal Act includes even petty dealers who are residing in the State and who may carry goods in headloads for casual sales in shandies. This has resulted in hardship to such dealers as casual traders have to register themselves under the Act and pay tax irrespective of the quantum of their turnover. The intention of the Government is not to tax such dealers. Casual dealers from the adjoining States bring their goods to the fairs, festivals and exhibitions in this State. Some others bring goods in motor vans, etc., to this State, sell them and go away to their States. They may be standing dealers in other States. But they escape assessment to tax on their sales in this State. To check the evasions of this kind, Dr. P. S. Lokanathan who examined the sales tax system in this State, recommended that such dealers should be registered and taxed without any limit of turnover. The Government accepted the recommendation of Dr. Lokanathan. The intention of the Government was thus to tax only the non-resident dealers who adopt " sell and run " tactics within the State. In the circumstances the Government propose to amend clause (*e*) of section 2 of the Act suitably. Sub-clause (ii) of clause 2 of the Bill contains the provision in this regard.

The concession of compounding sales tax is at present available to dealers having a total turnover between Rs. 10,000 and Rs. 25,000 in a year. The Government have decided to extend this concession to dealers having total turnover between Rs. 25,000 and Rs. 50,000 in a year. Clause 3 of the Bill provides for the amendment of section 7 of the Act to give effect to this decision. The existing slabs of Rs. 5,000 and the rate of tax of Rs. 60 for each slab of Rs. 5,000 in the case of dealers with a turnover not exceeding Rs. 25,000 have been adopted also for dealers with turnover between Rs. 25,000 and Rs. 50,000.

Rule 11 of the Madras General Sales Tax Rules, 1959, enables the assessing authority to make provisional assessment to the best of its judgment if no return is submitted by the dealer or if the return submitted by him is incomplete or incorrect. The Committee on Subordinate Legislation has observed that this rule is *ultra vires* as section 13 (2) of the principal Act provides for the making of provisional assessment based on the preceding year's turnover only. 11-30 a.m.

The provisions for the issue of copies of the registration certificates for exhibition by a dealer at each of his place of business, the issue of duplicate of a registration certificate when the original is lost or accidentally destroyed and the levy of fees for the copies and duplicates of registration certificates are now contained in rule 24 of the Madras General Sales Tax Rules, 1959. The Committee on Subordinate Legislation has pointed out that these are not in order as there is no provision in the principal Act for these matters. It is therefore proposed to incorporate in the principal Act itself the provision of rule 11 and the provisions relating to the

issue of copies and duplicates of registration certificates and the fees to be levied therefor. The opportunity is taken also to rectify an error in sub-section (4) of section 21 of the principal Act. Clauses 4 and 5 of the Bill contain the provisions for these purposes.

There is no provision in the principal Act for the issue of duplicate of a permit when the original is lost or accidentally destroyed. The provisions in this regard are contained in the rules. In view of the observations of the Committee on Subordinate Legislation it is proposed to make necessary provision in the Act itself for the issue of duplicate of a permit when the original is lost or accidentally destroyed. Clause 6 of the Bill contains the necessary provisions in this regard.

Clause 7 of the Bill provides for the addition of the words "having jurisdiction" at the end of the opening paragraph of section 31 of the principal Act so as to indicate clearly the Appellate Assistant Commissioner to whom an appeal should be filed.

Sometimes it is necessary to transfer an appeal filed before an Appellate Assistant Commissioner to a different Appellate Assistant Commissioner. The power for such transfer is now exercised by the Board of Revenue under the provisions of rule 27 (5) of the Madras General Sales Tax Rules, 1959. The Committee on Subordinate Legislation has observed that this rule is *ultra vires* of the Act. As such a power is necessary, provision is proposed to be made in this regard in the principal Act itself. Clause 8 of the Bill accordingly seeks to insert a new section in the principal Act empowering the Board of Revenue to transfer appeals from one Appellate Assistant Commissioner to another, and to stay further proceedings before an Appellate Assistant Commissioner while it is considering the question of such transfer. This clause also provides for the affected party being heard if an order of such transfer would adversely affect him.

Under section 38 (1) of the Madras General Sales Tax Act, 1959, a revision petition can be filed in the High Court only in a case where the total turnover as determined by the Appellate Tribunal is Rs. 50,000 or over. There have been instances where the total turnover as determined by the assessing authority far above Rs. 50,000 was reduced by the Appellate Tribunal far below that amount. Important questions of law may arise even in a case where the total turnover is below Rs. 50,000. In order to enable any aggrieved party including the Government to prefer revision petitions to the High Court against any decision of the Appellate Tribunal, the Government propose to remove the monetary limit of Rs. 50,000. Clauses 9 and 10 of the Bill contain the amendments to the principal Act to give effect to this proposal.

Section 41 (4) of the Principal Act provides for confiscation of goods not accounted for by the dealer in his accounts, registers, records and other documents maintained by him. Section 42 (3) provides for confiscation of goods not covered by bill of sale or

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delivery note, log book, trip sheet or goods vehicles record and any other prescribed documents. There is no provision in the Act for the levy of any penal amount and the tax due in lieu of confiscation. Provision in this regard has been made in rule 37 of the Madras General Sales Tax Rules, 1959. The Committee on Subordinate Legislation has observed that rule 37 is *ultra vires* as there is no power in the principal Act for the exercise of such power by the officer adjudging confiscation. It is therefore proposed to incorporate the provisions of rule 37 in the principal Act, by amending sections 41 and 42 of the Act. Clauses 11 and 12 of the Bill contain the provisions in this regard.

The Committee on Subordinate Legislation has recommended for adoption in Bills a model clause relating to the placing of rules on the table of Legislature. Clause 13 of the Bill seeks to incorporate the model clause in section 53 of the principal Act.

Clause 14 provides for the correction of a mistake in item 38 of the First Schedule to the principal Act.

I request that the Bill be taken into consideration.

MR. CHAIRMAN : Motion moved—

'That the Madras General Sales Tax (Second Amendment) Bill, 1961 (L.A. Bill No. 15 of 1961), as passed by the Legislative Assembly, be taken into consideration'.

SRI K. BALASUBRAMANYA AYYAR : Sir, I welcome some of the important amendments brought before the House, especially the one relating to the raising of the turnover limit to Rs. 50,000 for purposes of composition. I think this was suggested even at the Joint Select Committee stage. We said that the limit for composition could be raised to Rs. 50,000. But then the Minister said that he would wait for some time, have experience, and then if necessary do it. I am glad that he has now come forward after experience to increase the turnover limit from Rs. 25,000 to Rs. 50,000. But the rates of tax could be a little less. So far as the first three slabs are concerned, namely, Rs.. 120, Rs. 180 and Rs. 240, they have already been mentioned. As far as the definition of 'casual trader' is concerned, the object is not to tax the people who are petty dealers within the State. I do not know whether by the addition of the words 'not reside within the State', we will be able to effectively administer the Act. This is the doubt I have. Casual trader is defined as follows :—

" 'Casual trader' means a person who has, whether as principal, agent, or in any other capacity, occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and who does not reside or has no fixed place of business within the State."

Suppose a dealer comes and distributes goods to the retail dealers and runs away. What is the position in regard to the collection of the tax? That is the doubt I have. He may escape and the petty dealers may be taxed. We must try to avoid this also. The tax should not be on the retail dealers who, on account of the other man's action, are liable to tax. This question also the Government should take into consideration. It is all right so far as the other man is concerned, because it is only for a casual transaction he comes here.

So far as the rule-making powers are concerned, we said at the Joint Select Committee stage that the High Court might not be unnecessarily bothered by small petitions. But questions of law may arise in even very small matters. Sometimes we have to argue questions of law for two or three days. Therefore questions of law do arise whatever may be the subject-matter. Therefore it is a very wholesome provision to remove the monetary limit. The sooner it is brought in the better it will be for all.

Probably the Subordinate Legislation Committee agreed with the status of the Assistant Comerical Tax Officers. I suppose they are not entitled to go into the nature of the thing. They said that it was not within the rule-making powers of the Government to define the term ' Assistant Commercial Tax Officer '. Now the Government are going to make the relevant rules part of the Act itself.

This is all I have got to say, Sir.

* SRI M. SESHACHARIAR : Sir, as the hon. Member Sri Balasubramanya Ayyar has said, this is of course a salutary piece of legislation so far as the assessees are concerned. Up to the turnover limit of Rs. 25,000 they were in a position to pay the compounded tax. Now the limit is increased to Rs. 50,000. No doubt they did not have any aggrieved person at any time so far in the matter of putting in revision petitions in cases where the turnover amount was less than Rs. 50,000. Now irrespective of the turnover limit, he can file a petition. The turnover limit is removed. The other point is in regard to the suggestion made by the Subordinate Legislation Committee. The Committee has said that the rules relating to the levy of a fee of Rs. 5 for each copy of the registration certificate are *ultra vires*. If a person wants to have his business in four or five places, he has to get copies of the registration certificate and hang them in all those places. We are now providing for this in the Act itself. I do not know whether this is absolutely necessary. But the Subordinate Legislation Committee appears to
11-40 have said that it is so. They think that there is no provision in the Act and that, therefore, the Government will not have that right. Then, the other thing is, there was a provision in the Act to the effect that if a return was not submitted or if the return submitted was not believed by the authorities concerned, they could base the levy for that year on the tax paid during the previous year. The

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Committee on Subordinate Legislation felt that a provision to the effect that the assessment in such cases should be based on 'best of judgment' as mentioned in the rules should be made in the Act itself. Such a provision exists in the Income-tax Act. This is now made in the Act itself and is welcome and useful, because assessment based on previous year's tax would not be correct. 'To assess the dealer to the best of its judgment' is, I think, all right.

SRI MOHAMED RAZA KHAN : Mr. Chairman, I have got one or two doubts which I think the Hon. Minister in charge of the Bill will try to clarify. The most important provision of the Bill is the raising of the turnover limit to Rs. 50,000 for the purpose of composition. The tax will be compounded to Rs. 540 if a dealer has had a turnover of fifty thousand rupees. I do not want to deal with other matters which are a little legalistic, arising out of the recommendations of the Subordinate Legislation Committee. In this case of composition, a dealer wholse turnover is fifty thousand rupees need not pay more than Rs. 540 even though he might have collected more money by way of tax from purchasers. Of course, I welcome this provision which is based on the assurance that the Hon. Minister gave earlier. But I have this doubt. Suppose a man dealing in radios has a turnover of four thousand rupees a month. Radios are subject to a high single-point levy—7 per cent or so. So, that man collects a tax of Rs. 280 from his customers. Is it enough that in spite of his huge collections of tax he pays every year Rs. 540? According to this provision, as I understand it, he can pocket Rs. 240 and hand over Rs. 40 to the Government. Let us suppose that either myself or Mr. Seshachariar deals in such articles. We will certainly collect tax at the rate of six or seven per cent. If we hand over only Rs. 540 to Government at the year end, will that be correct? That is my doubt and the Hon. Minister may clarify it. He is an all-India expert on matters of sales tax. He is so well-versed that every State in India would do well to invite him to advise them on sales tax. They will certainly benefit from his advice. That is a compliment which he deserved. Sir, when there was an agitation some time ago by merchant opposing single-point levy on certain goods and multi-point levy on others, he gave an assurance that after working the Act for some time, he would find out the difficulties and hardships or the merchants and try to remove them. It is in that view that the Government provided for any decision that they might take to be announced first and then to be brought before the Legislature for ratification, subsequently. The other day he made an important pronouncement in the Lower House that having regard to the representation made by various businessmen dealing in bottles he was shifting the tax from single-point to multi-point. In fairness he ought to have announced it in this House also.

SRI K. BALASUBRAMANYA AYYAR : That is not relevant here.

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SRI MOHAMED RAZA KHAN: Let him say whether it is relevant or not. Why should we say it? It is parliamentary procedure to announce any important decision in the Houses of Legislature when the yare in session. Of course, we followed his announcement in newspapers. In this connection, I wish to point out one thing. He told the merchants: 'Here is single point and here is multi-point; choose anything.' But the margin is no nicely arranged that they could not find out which was more advantageous, and later on they started crying. It must be said to the credit of the Hon. Minister and the Government that on account of increasing tempo of activities, sales tax returns are increasing year by year.

Sir, the casual dealer has now been defined properly. But how are the Government going to find a way of catching him? In the City of Madras many such dealers do business worth lakhs of rupees every day. How is the Board or the sales tax officers going to locate them? There is a widespread feeling that evasion is there. The tendency of people is to evade tax. Human nature being what it is, we cannot avoid it.

Then, Sir, let me refer to one more matter and conclude. I have been repeating it many times here in the hope that there will be some chance of acceptance of the suggestion by the Government if I go on repeating it. About the levy of sales tax on hides and skins, my esteemed Friend, Mr. Patanjali Sastri said on a former occasion that whatever was exported from the City of Madras was an exportable commodity for purposes of earning foreign exchange. The leather industry is something 'exclusive' for Madras. He asked whether such a thing could be brought within the purview of the Sales Tax Act. But nobody has devoted attention to this aspect. The Hon. Minister took pains to point out that if it was so, the parties could go to courts. Sir, there have been many decisions of courts against the Government but they are not worried about those decisions. They are not worried about Acts being set aside by the High Court and the Supreme Court. But the point I want to make is this. For the last ten or fifteen years, on a wrong interpretation of the sales tax rules, certain businessmen thought that they were not bound to pay tax and the departmental officers also thought so. But when they were suddenly told that tax was due from them, they had to face lot of difficulties and many of them had to close down their business. Last time, when another Amendment Bill came before the House, the Hon. Leader of the House said that they had the facility to pay in instalments. Their position is such that they are not able to pay anything, on account of several other factors like labour trouble and so on. I know of an instance where a businessman went to the Secretary of the Board of Revenue and cried: 'I have lost everything; the department demands Rs. 60,000 from me'. Once he was the biggest businessman. Then he had to sell away his house and had only Rs. 100 left in the bank, and that for foreign references. If he had any chance of revival, he could refer his future buyers to that bank.

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It was for that purpose he was keeping that one hundred rupees. 11-40 a.m. But the department said: 'We will attach even that under the law'. It is here that great difficulties arise. The Government should consider this aspect of the question. The Hon. the Minister for Industries who is particularly interested in the development of industries should pay some attention to this. 'It does not matter even it some money is lost", said the Hon. Minister the other day, 'but we should liberally help the small industries to come up'. That is the principle on which the Government now proceeds in promoting industries. Therefore before insisting on recovering the arrears, the Government should have considered whether they would be in a position to pay it. If they are in a position to pay, well and good, the Government can proceed to realise the arrears. But if they are not in a position to pay them even in instalments there is no point in persisting to produced against them for recovery.

Sir, though this point is not directly relevant to the Bill under consideration, I submit these are the occasions when we can bring the difficulty of the trade to the notice of the Government.

Thank you, Sir.

* SRI M. PATANJALI SASTRI: Mr. Chairman, Sir some time ago I made a remark about legislation in the two Houses being rather hurried. I now find that this amending Bill brought forward by the Hon. Minister for Industries illustrates my remark and adds point to it. I happened to be a member of the Committee on Subordinate Legislation. The Committee found that many of the rules made by the Government in pursuance of the various provisions of the Act were very good and relevant and should indeed be supported. But we felt that there were no corresponding provisions in the Act authorising the framing of such rules on various matters, to which the rules related. Therefore we were constrained to hold that these rules were *ultra vires*. In fact as the Hon. Minister was reading his notes on the various clauses, we found there were repeated references to the recommendations of the Committee on Subordinate Legislation holding the various rules *ultra vires* because corresponding authorizing provisions were not incorporated in the Act.

In this connection I might clear the doubt of the hon. the Deputy Leader of the Opposition. The Committee on Subordinate Legislation was not concerned with the policy of the Act or with the policy of the rules. We were concerned merely to see whether the rules made were in consonance with the terms of the Act or whether they contravened or did not contravene any of the provisions of the Act. Therefore from that point of view we were constrained to hold certain wholesome rules made under the Act by the Government as *ultra vires*. Later on after they had time to think out the various aspects of the legislation they made they framed very good rules but unfortunately there were no corresponding provisions in the Act and therefore the rules could not be held

to be *intra vires.* That illustrates, notwithstanding the fact that much compliment was paid by the hon. Member Sri Raza Khan to the Mover of the Bill that he is an expert in sales tax—that is no fault of his—the fact that he must have the time to scrutinise the various provisions and aspects and come out with a Bill which contains all the appropriate provisions to cover all possible contingencies. If we work at high pressure, no doubt, even experts go wrong. Therefore this amending Bill adds point to my remarks about legislation in the two Houses being rather hurried. That is my general remark.

Then, Sir, about the amending Bill, it appears to me when I read the definition of the Assistant Commercial Tax Officer, that it is not correctly worded. Again I may point out that we said in the Committee on Subordinate Legislation that rules cannot add definitions to the various provisions in definition section of the Act. They should be transported, if at all, to the body of the Act. The Bill says: ' Assistant Commercial Tax Officer ' means any person appointed by the Deputy Commissioner by name or by virtue of the office, to exercise the powers of an ' Assistant Commercial Tax Officer '. . Perhaps the Hon. Minister will consider the addition of the words ' for the time being ' after the words ' Assistant Commercial Tax Officer ' in the definition. If once a person is appointed by name or by virtue of his office, he will continue for ever to be the Assistant Commercial Tax Officer. The Government can appoint any officer as Assistant Commercial Tax Officer and they may want to change the person also. But according to the definition now given, Assistant Commercial Tax Officer means any person appointed by the Deputy Commissioner by name or by virtue of the office. Therefore he will continue for ever, till his death. That ought not to be the provision. Then the definition says ' by virtue of office '. Supposing a Tahsildar is appointed as Assistant Commercial Tax Officer he will continue for ever. Supposing the Government want later on to post some other officer as Assistant Comercial Tax Officer, they cannot do it. The Tahsildar would continue as the Assistant Commercial Tax Officer and that would lead to untoward consequences. If the Government want to change it, then an amending Bill may be rendered necessary. Therefore I would suggest for the consideration of the Hon. Minister the addition of th ewords ' for the time being ' after words ' any person.'.

Thank you, Sir.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, with regard to the point raised by the hon. Member Sri Balasubramanya Ayyar about the petty dealers who buy goods from the dealers who come from outside and deal with them, they will be governed by the taxing provisions of the Act, that is to say, if they have transaction over Rs. 10,000 then they will be liable to tax. Otherwise not. Therefore there will be no difficulty caused to them.

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Then, Sir, regarding the point raised by the hon, Member Sri Raza Khan, whether a person liable to single point tax can collect tax and pay only the compounded amount, we can take care to see that he cannot do that. Section 7 applies only to those cases in which the multi-point tax is collected. The subsequent section deals with single point tax. Therefore he cannot escape responsibility.

SRI MOHAMED RAZA KHAN : On a point of explanation, Sir. May I therefore take it that business men doing business in articles bearing single point tax will not come under the operation of the particular provision?

THE HON. SRI R. VENKATARAMAN : The very principle of single point taxation is that in respect of single point tax, he must pay the tax separately.

Then, Sir, with regard to the notification about concessions made, I wish to submit to the House that the notification will be issued on 1st April 1961. A copy of the notification will also be placed on the table of the House.

The hon. Member Sri Raza Khan also mentioned one particular case he had in mind. Short of waiving the tax we have done everything in this case. I am sure the hon. Member will have no complaint about it. I do not also want to refer to the person by name.

I may also say that the courts have not set aside any of the provisions of this Act, in the cases that have so far arisen. I think this is one of the Acts which was very carefully planned and prepared and actually this criticism of hurried legislation would not apply to this particular legislation. It was in the stage of preparation for one year and before the Joint Select Committee for another year. We had several sittings of the Joint Select Committee. The point raised was this. At the time when we framed this Act, by virtue of experience in the past of the 1939 Act under which certain rules were framed and they were accepted without question --they were not set aside by the courts on the ground that they were *ultra vires*—they thought that the same rules can continue under the new Act. But since the Committee on Subordinate Legislation recommended that it is better to have it in the main Act, we have accepted that recommendation and we are now putting them in the Act itself. It is not because we had not time for detailed scrunity of the various provisions of the Act, but because we thought since the rules made under the 1939 Act were held valid and not questioned in a court of law, they would continue to be valid even under the present legislation.

SRI M. PATANJALI SASTRI: I am not casting any reflection on anybody. I was only suggesting that if there was more of time, the Act would have been more perfect.

THE HON. SRI R. VENKATARAMAN : That is what I am also explaining. Our understanding was based on the previous legislation on the subject and previous legislative experience that these rules might very well go as rules. But since the Committee on Subordinate Legislation recommended, we agreed with many of the points stated therein. For instance, I may refer to transfer of an appeal from one Assistant Commissioner to another. In the rules under the original Act we had similar provisions and nobody questioned it. Still when we examined it from the point of view of propriety of legislation, we had to accept the recommendation
12-00 noon. of the Committee on Subordinate Legislation, and we said that it should be incorpoated in the Act.

Then with regard to the appointment mentioned by Sri Patanjali Sastri, the notification by which a person is appointed by name or by virtue of his office can be cancelled and then he will cease to hold office. That is why we have not stated, 'for the time being'. The moment another officer who is designated as the Assistant Commercial Tax Officer to perform some particular functions ceases to perform those functions or is not required to perform those functions, we will issue a notification cancelling the appointment. There is no question whether the appointment will be valid, because the Act provides that he can be appointed by a notification and once the notification is withdrawn and cancelled, he will cease to be an Assistant Commercial Tax Officer. The power to appoint by notification includes the power to cancel the notification. Therefore, Sir, I request that the Bill be taken into consideration.

MR. CHAIRMAN : The question is :—

'That the Madras General Sales Tax (Second Amendment) Bill, 1961 (L.A. Bill No. 15 of 1961), as passed by the Legislative Assembly, be taken into consideration.'

The motion was put and carried and the Bill was taken into consideration.

Clauses 2 to 14 were put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI R. VENKATARAMAN : Sir, I move—

'That the Madras General Sales Tax (Second Amendment) Bill, 1961 (L.A. Bill No. 15 of 1961), as passed by the Legislative Assembly, be passed.'

MR. CHAIRMAN : The question is—

'That the Madras General Sales Tax (Second Amendment) Bill, 1961 (L.A. Bill No. 15 of 1961), as passed by the Legislative Assembly, be passed.'

The motion was put and carried and the Bill was passed.